

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE**

THE UNITED STATES OF AMERICA

v.

No. 19-cr-00251-LM

JOHNATHON IRISH

**MOTION TO CONTINUE SENTENCING HEARING**

The defense respectfully requests that the sentencing hearing scheduled for February 18, 2021 be continued to April 1, 2021 or a later date, for the reasons set forth below.

Johnathon Irish was convicted after a jury trial of being a prohibited person in possession of a firearm in violation of 18 U.S.C. § 922(g)(1). His sentencing hearing has been delayed several times and is currently scheduled for February 18, 2021. Mr. Irish has been held in custody at the Merrimack County House of Corrections since his arrest. He will remain there during any continued delay prior to sentencing.

On Wednesday, February 3, 2021, the court's case manager notified the defense and government that the court intended to reschedule the February 18, 2021 sentencing hearing because of the pandemic infection rates, the slow process of vaccination, and the rise of variant strains of the coronavirus. The government responded that it would be amenable to a video sentencing hearing if the defendant consents. The defense responded that Mr. Irish does not consent to a video hearing, maintaining his prior request for an in-person hearing, but that the defense has no objection to rescheduling the hearing to March or later.

On Friday, February 5, 2021, the court's case manager notified the parties that the court may proceed with the hearing on February 18, 2021, after all, notwithstanding the

previously noted concerns, but that the court would also be able to hold the hearing on April 1, 2021. The government responded that it preferred to hold the hearing on February 18, 2021, as scheduled, if possible. The defense responded that Mr. Irish had concerns with going forward on February 18, 2021, but that April 1, 2021 would be acceptable. The court's case manager wrote to the parties on the afternoon of Friday, February 5, 2021, that the hearing would remain scheduled for February 18, 2021, but that if a party wanted to reschedule the hearing it should file a motion to continue, which the court would consider, after allowing for any response or objection.

The defense seeks to reschedule the sentencing hearing to April 1, 2021, or a later date, as was contemplated last week, for the following reasons.

First, there is good reason to believe that Mr. Irish and other participants may be at risk to exposure to the virus if the in-person hearing is held on February 18<sup>th</sup>. While progress is being made, the virus is simply not contained and under control at this time. Federal and state governments are actively seeking to contain and diminish the virus through vaccines and other measures. There are good reasons to believe that these efforts will be successful in the near future, even if there are temporary setbacks or delays, but we are not there yet. What is certain right now is that there is a significant risk of exposure and that it will be avoided if the sentencing hearing is rescheduled.

Second, the government is not prejudiced in any way by rescheduling the sentencing hearing. Mr. Irish is in custody and will remain in custody. To the extent the government seeks to punish him and protect the public, those goals are being served right now by his continued incarceration. In addition, the government agreed to continue the sentencing hearing previously, implicitly recognizing that it is not disadvantaged by a

delay. The government simply cannot show any harm to its presentation at sentencing, any risk the community, or any other prejudice that would result from rescheduling the hearing from February 18<sup>th</sup> to April 1<sup>st</sup>.

Third, Mr. Irish does have legitimate health concerns arising from conditions which may increase his risk of severe illness. According to Mr. Irish and his mother, he was diagnosed with cough-variant asthma at age 4 at Boston Children’s Hospital by Dr. Lynda Schneider. Counsel is seeking but does not yet have records to document this condition. As the court is aware, asthma is identified by the CDC as a condition which may increase the risk of severe illness from COVID-19. *See generally* <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html#asthma>.

Mr. Irish also has a prosthetic eye, as the result of a childhood injury, as documented in the records submitted in connection with sentencing. He reports that area of his prosthetic eye is prone to infections, that he has had recent infections, that wearing a mask is difficult with the eye because the mask tends to contact that area, and that some masks seem to irritate the area.

Also, while not a medical condition, Mr. Irish’s psychological issues include a diagnosis of Attention-Deficit/Hyperactivity Disorder (“ADHD”). *See* Presentence Investigation Report ¶¶ 83 – 86. Notably, this condition has existed throughout his life and was confirmed by a Bureau of Prisons evaluation in 2014. *Id.* at ¶85. A condition such as ADHD does not make a person naturally at a higher risk for severe illness from COVID-19. However, the CDC recognizes that “some people with developmental or behavioral disorders may have difficulties accessing information, understanding or

practicing preventative measures, and communicating symptoms of illness.”

<https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-developmental-behavioral-disabilities.html> . The CDC specifically recognizes ADHD as one of the conditions which may create these problems. *Id.*

The conditions at the Merrimack County jail are relatively stable for Mr. Irish, but he has not been vaccinated and is not scheduled to be vaccinated. Kara Wyman, Assistant Superintendent at the Merrimack County Department of Corrections, has provided the local defense bar with information on a semi-regular basis. According to her message on February 5th, it appears that some but not all Merrimack inmates have been tested, with no current reports of positive tests. The jail received its first round of vaccinations on Friday, January 29th, with the second round expected to arrive on February 26th. The report is that 55 staff members and 13 inmates have been vaccinated pursuant to the guidelines in Phase 1b. Thus, most inmates, including Mr. Irish, have not been vaccinated.

In summary, considering all of the foregoing, the court should exercise its discretion to reschedule the sentencing hearing from February 18, 2021 to April 1, 2021 or later. The likelihood is that the risk will begin to diminish in upcoming months due to vaccinations and other efforts to control the virus. Delaying the hearing does not prejudice the government. And Mr. Irish does have legitimate health concerns which justify extra caution. The court can preserve Mr. Irish’s right to an in-person hearing and do justice to all interests in this case, while protecting the health all of involved, by simply rescheduling the hearing.

No additional memorandum is submitted because any necessary authority is contained herein.

The Government, through Assistant United States Attorney Anna Krasinski, objects to this motion.

WHEREFORE the defense requests that the sentencing hearing scheduled for February 18, 2021 be continued to April 1, 2021 or a later date.

Respectfully submitted this 9<sup>th</sup> day of February 2021 by counsel for Mr. Irish,

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#### CERTIFICATE OF SERVICE

I hereby certify that this document, filed through the ECF system, will be sent electronically to registered Participants identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to the nonregistered participants on the date the document was signed by me.

/s/ Richard Guerriero